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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1949

No. 435

NATIONAL LABOR RELATIONS BOARD,
Petitioner

V.

POOL MANUFACTURING COMPANY
Respondent

BRIEF FOR POOL MANUFACTURING COMPANY

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STATEMENT

There is no issue as to the facts stated by Petitioner, except to point out that the order sought to be enforced related to bargaining which commenced on September 26, 1945, and terminated December 7, 1945. The certification under which the bargaining took place had been issued by the Board on December 17, 1943, (R. Page 43). The petition for enforcement of the order

was filed in the court below on February 17, 1949, (R. Page 1). Respondent's motion for leave to adduce additional evidence before the court is set forth in full at pages 59 through 61 of the record. For the convenience of the Court we reprint in the appendix to this brief the motion of the Respondent. This brief Page 6.

It is important to call to the Court's attention the fact that the order sought to be enforced was prospective in its nature directing the parties to bargain collectively in the future.

SUMMARY OF ARGUMENT

I.

The motion of Respondent to take additional evidence under Section 10(e) of the statute was addressed to the judicial discretion of the court, and the burden is on the Board to show that the order of the court below is arbitrary, unreasonable, or an abuse of discretion. This burden has not been sustained.

II.

The change in the substantive law defining the bargaining relation, the lapse of time since the entry of the order of the Board, and the fact that following the order of the Board, the Union and the Company had negotiated extensively without reaching an agreement, together with the fact that the developments since the order of the Board were unknown to the Board and might require the Board under its admin-

istrative policy to modify the order, sustained the discretion of the court below in directing an inquiry into the developments since the order of the Board.

ARGUMENT

Respondent's motion set out affirmatively that it had complied with the order of the Board; that all striking employees had returned to work and had been reinstated under collective bargaining procedures and that all differences between the Company and the Union relating to the return to work of the striking employees had been concluded by agreement. Respondent alleged that it had met with the Union following the order of the Board, but that no contract had been reached and that a representative of the certified union had advised Respondent that a substantial group of Respondent's employees were members of another union, Amalgamated Clothing Workers of America, CIO. The motion further presented that the Union had not bargained in good faith with the Respondent and that the change in the bargaining relation effected by the Labor Management Relations Act of 1947 should be taken into account by the Board to determine whether the order should be modified.

The motion did not present the fact of compliance by Respondent as a defense to the enforcement proceeding filed by the Board. Nor did the court below hold that compliance with an order of the Board was a defense to its judicial enforcement, and the court likewise did not refuse enforcement to the order of the Board in the instant case. In *National Labor Re-*

lations Board v. The Cooper Co., 179 Fed. 2d 241, the court below in commenting upon the instant case said:

> "Indeed, nothing was decided there (speaking of the Pool and Mexia cases). The Court, expressly deferring decision, merely referred the matter back to the Board for its assistance in furnishing further information and for its recommendations or requests in the light of such further information."

The bulk of Petitioner's brief is consumed with proving what is admitted in the case at bar.

Nor is there involved in the case at bar a denial by the court below of enforcement of the order of the Board. There is no frustration of the administrative wisdom and expertness of the Board. The attack made upon the court below in the petition for certiorari and the plaintive plea that the Board proceeding has become a merry-go-round are inappropriate to the unvarnished facts. Here as in most cases the facts and record are more important than generalities, and the actual situation in the court below must be viewed from its perspective to evaluate its order properly.

This case is a companion case to *No. 434, National Labor Relations Board v. Mexia Textile Mills, Inc.* The facts are closely parallel and the decision in the Mexia case is conceded by Respondent and Petitioner to govern the case at bar for the reasons set forth in Respondent's brief in the Mexia case.

Respondent prays the order of the court below be affirmed.

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APPENDIX

In the United States Court of Appeals
For the Fifth Circuit

(File Endorsement Omitted)
(Title Omitted)

Reply to Motion of Petitioner for Summary Degree and Motion of Respondent for Leave to Take Additionel Evidence—Filed April 18, 1949

Now comes Pool Manufacturing Company, Respondent herein, replying to the motion of Petitioner, National Labor Relations Board, for summary decree and applies to the Court for leave to take additional evidence, and for grounds for such reply and for such leave would respectfully show:

1.

The complaint upon which the order of the Board was rendered resulted in a hearing before a trial examiner in April and May of the year 1946. The report of the trial examiner was issued June 25, 1946, and the order now sought to be enforced was rendered August 26, 1946.

2.

Following the rendition of the order, Respondent, Pool Manufacturing Company, notified the Regional Director of the National Labor Relations Board that

it accepted the order and complied with the requirements of the order of the National Labor Relations Board with respect to the affirmative actions, including the posting of notices. Substantially all of Respondent's employees who had been on strike prior to the hearing had returned to work before the order was rendered, and Respondent entered into collective bargaining with United Garment Workers of
94 America, AF of L, concerning the affirmative action required by the Board order so that all differences between the Respondent and the Union relating to the return to work by the striking employees were fully settled by collective bargaining. The United Garment Workers of America, AF of L, did not seek to bargain with Respondent on wages, hours and working conditions following the return to work of the striking employees in the summer of 1946 until January of 1948. At that time by letter dated January 26, 1948, United Garment Workers of America, AF of L, requested Respondent to open negotiations on a proposed union contract. Respondent accepted the invitation and by agreement with the Union a bargaining conference was held on February 13, 1948, and a second bargaining conference held on February 20, 1948. At these two conferences, which were recorded by a court reporter, proposals from the union were received and counter proposals from the Company to the Union were offered. The parties were unable to reach an agreement.

3.

Following the conference of February 20, 1948, the

Union has made no effort to bargain with the Respondent, although Respondent has at all times been ready, able and willing to bargain with the Union. Respondent is advised and believes and now in good faith questions, whether the union now represents a majority of the employees within the unit specified by the Board order. The Union organizer, Miss Emily Jordan, has advised Respondent's attorney that the Amalgamated Clothing Workers of America, CIO, have a substantial group of members in the plant of the Respondent. Individual employees of Respondent have stated that they do not now belong to United Garment Workers of America, AF of L, and do not desire that such union represent them in collective bargaining. Respondent is unable to bargain collectively with United Garment Workers of America, AF of L, under the circumstances and such bargaining will not effectuate the policies of the Act.

95 4.

Respondent would show that all the facts and circumstances set forth herein have occurred since the record in the instant case was closed and completed and that, therefore, Respondent could not offer such evidence before the Board at the time of the hearing. Respondent would show that the changed circumstances resulting from the facts and premises hereinabove set forth should be presented to the Board for its consideration to determine whether the order entered almost three years ago should now be revised or set aside to determine the question of whether United Garment Workers of America, AF of L, does in fact represent

a majority of the employees within the unit, or whether the employees desire to exercise their right to choose another bargaining agent, or to bargain for themselves.

5.

Respondent would further show that since the rendition of the order in this case by the National Labor Relations Board, Congress has enacted the Fair Labor Standards Act effective August 23, 1947. That pursuant to the provisions of said Act, the duty to bargain is reciprocal between Respondent and the bargaining agent, and that the bargaining agent, United Garment Workers of America, AF of L, has not bargained in good faith with Respondent and has not endeavored to bargain with Respondent and that this fact constitutes a change in circumstances which under the law now in effect should be considered by the Board to determine whether its order should remain in the form originally issued three years ago. In that connection Respondent would show that the order of the Board and the enforcement order of the Court are prospective in nature, designed to establish a collective bargaining relation in the future, as distinguished from penalizing any party for acts and transactions which occurred more than four years ago.

WHEREFORE, premises considered, Respondent, Pool Manufacturing Company, prays that the motion
96 of Petitioner, National Labor Relations Board, for a summary decree of enforcement be denied, and that this case be remanded to the Board with instruc-

tions for the taking of additional evidence pursuant to the provisions of Title 29, Section 160(e), USCA.

Respectfully submitted,

POOL MANUFACTURING COMPANY

By: SAMUELS, BROWN, HERMAN & SCOTT
1210 Electric Bldg.
Fort Worth, Texas
Attorneys for Respondent

Of Counsel:
JOHN M. SCOTT
John M. Scott

THE STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, a Notary Public in and for Tarrant County, Texas, on this day personally appeared JOHN M. SCOTT, who after being by me duly sworn does on oath say that he is the attorney of record for Pool Manufacturing Company, a corporation; that upon information and belief, the facts set forth hereinabove are true and that the foregoing motion for leave to take additional evidence is filed in good faith and not for the purpose of delay, solely that justice may be done.

JOHN M. SCOTT

Subscribed and sworn to before me by the said JOHN M. SCOTT on this the 16 day of April, A. D. 1949.

OPAL CONDER
(SEAL) *Notary Public, Tarrant County, Texas*

The relevant provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.) are as follows:

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer-

* * * * *

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

* * * * *

The relevant provisions of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. II, Sec. 141, et seq.) are as follows:

SEC. 10. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * for the enforcement of such order and for appropri-

ate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its members, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript.* * *.